

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESUS RODRIGUEZ,

Plaintiff,

- against -

NANCY A. BERRYHILL,¹

Defendant.

ORDER

16 Civ. 1226 (PGG) (BCM)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Jesus Rodriguez filed a motion on May 17, 2018 pursuant to Section 206(g) of the Social Security Act, 42 U.S.C. § 406(b), seeking an order approving a contingent fee arrangement in this social security case. (Dkt. No. 21) The Commissioner does not object to Plaintiff's motion. (Dkt. No. 24) On January 18, 2019, this Court referred the motion to Magistrate Judge Barbara C. Moses. (Dkt. No. 25) On January 22, 2019, Judge Moses issued a Report and Recommendation ("R&R") recommending that this Court grant the Plaintiff's motion. (Dkt. No. 26)

In her R&R, Judge Moses notifies the parties that they have fourteen days from service of the R&R to file any objections, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. (R&R (Dkt. No. 26) at 4) The R&R further states that "[f]ailure to file timely objections will . . . preclude appellate review." (*Id.*) Neither party has filed objections to the R&R.

In reviewing a report and recommendation, a district court "may accept, reject, or

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Fed. R. Civ. P. 25(d), she is substituted for former Acting Commissioner Carolyn W. Colvin as the defendant in this action.

modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When a timely objection has been made to the magistrate judge’s recommendations, the district court judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” Id.

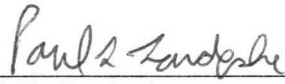
Where, as here, no objections are filed to a magistrate judge’s R & R – despite clear warning that a failure to file objections will result in a waiver of judicial review – judicial review has been waived. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); see also Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” (citing Small v. Sec’y of Health and Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam))); Spence v. Superintendent, Great Meadow Correctional Facility, 219 F.3d 162, 174 (2d Cir. 2000) (“Failure to timely object to a report generally waives any further judicial review of the findings contained in the report.”).

This Court has nonetheless reviewed Judge Moses’s comprehensive and well-reasoned R & R and is satisfied that “there is no clear error on the face of the record.” Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). Accordingly, this Court adopts Judge Moses’s R & R in its entirety. Plaintiff’s motion is granted, and the Social Security Administration is directed to approve a net payment to Attorney Christopher James Bowes in the amount of \$14,354.50. The Clerk of the Court is respectfully directed to terminate the motion

(Dkt. No. 21) and to close this case.

Dated: New York, New York
January 2, 2020

SO ORDERED.



Paul G. Gardephe
United States District Judge